



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER GARR  
ATTORNEY GENERAL**

June 11, 1963

Honorable Crawford C. Martin  
Secretary of State  
Austin 11, Texas

Opinion No. C-94

Re: Date on which election  
on proposed Constitution-  
al Amendment contained in  
Senate Joint Resolution  
No. 26 is to be held.

Dear Mr. Martin:

Your request for an opinion reads as follows:

"The opinion of your office is requested concerning the proper construction of Senate Joint Resolution No. 26, Acts of the 58th Legislature, and the duties of the Secretary of State thereunder. S.J.R. No. 26 passed the Senate on April 23, 1963 and passed the House on May 23, 1963 with an amendment. On May 23, 1963, the Senate concurred in the amendment. S.J.R. No. 26 was filed in the office of the Secretary of State on May 30, 1963, without the signature of Governor Connally.

"There is a conflict between Section 2 and Section 3 of S.J.R. No. 26 with respect to the date upon which the proposed Constitutional Amendment is to be submitted to a vote. Section 2 states in part: 'The foregoing Constitutional Amendment shall be submitted to a vote of the qualified electors of this state at the General Election in November, 1964.' Section 3 states as follows: 'The Governor shall issue the necessary proclamation for said election to be held on the first Saturday after the first Monday in the month of November, 1963, and have notice of said proposed amendment and of said election published as required by the Constitution of Texas

and laws of this state.' The language, 'to be held on the first Saturday after the first Monday in the month of November, 1963,' was added by the House by floor amendment. Prior to its amendment, Section 3 made no mention of the date on which the election was to be held.

"In view of the foregoing, we respectfully request your ruling as to the effect of the conflict of dates for voting and which, if either, of the dates shall prevail."

We agree with you that Section 2 and Section 3 of Senate Joint Resolution No. 26 of the 58th Legislature, Regular Session, are in irreconcilable conflict, since Section 2 provides that the election on the proposed Constitutional Amendment contained therein shall be at the General Election in November, 1964, while Section 3 requires said election to be held on the first Saturday after the first Monday in the month of November, 1963. (Emphasis ours).

When two acts of the same session of the same Legislature cannot be harmonized or reconciled, that statute which is the latest enactment will operate to repeal the prior statute of the same session to the extent of any conflict in their terms. Ex parte de Jesus de la O, 227 S.W.2d 212 (Tex.Crim. 1950).

As between conflicting provisions of the same enactment of the Legislature, the prevailing line of authority as announced by a majority of the courts passing on the question is that the latest in point of order of arrangement prevails. Stevens v. State, 159 S.W. 505 (Tex.Crim. 1913); Parshall v. State, 138 S.W. 759 (Tex.Crim. 1911); Attorney General's Opinions 0-6621 (1945), 0-6379 (1945) and 0-5329 (1943).

It is our opinion that the answer to your question is governed by the authorities cited in Attorney General's Opinion 0-6621, supra, and we therefore quote the following from this opinion:

"The conclusion thus reached requires an answer to the question: As between conflicting provisions of the same enactment of the Legislature, which should prevail?"

"Although the rule has been criticized as 'purely arbitrary' (Smith v. Board of Trustees of Barnes City, 198 Cal. 301, 245 P. 173), in accordance with the principle that the last expression of the Legislative will is the law, in case of conflicting provisions in the same statute, the prevailing line of authority as announced by the majority of courts passing upon the question in this country seems overwhelming that the last in point of time or order of arrangement prevails. 59 C.J. 999, § 596; Great Northern Ry. Co. v. U.S., 155 F. 945, 84 C.C.A. 93, affirmed 208 U.S. 452, 28 S.Ct. 313, 52 L.Ed. 567; U.S. v. Jackson, 143 F. 783, 75 C.C.A. 41, reversing C.C. Ex parte Jackson, 140 F. 266; U.S. v. Updike, 25 F.2d 746, affirmed C.C.A., 32 F.2d 1, certiorari granted, affirmed 281 U.S. 489, 50 S.Ct. 367, 74 L.Ed. 984; In re Richards, C.C.A., 96 F. 935; Reynolds v. U.S., 95 Ct.Cl. 160.

"For cases to the same effect, from eighteen states of the union see C.J. 999, § 596, note 58.

"Texas has clearly followed this rule of necessary construction in the case of Parshall v. State, 62 Tex.Cr.R. 177, 138 S.W. 767, from which we quote the following:

"\* \* \* "The different sections or provisions of the same statute or Code should be so construed as to harmonize and give effect to each, but, if there is an irreconcilable conflict, the later in position prevails." Lewis' Suth. on Stat.Const. (2d Ed.), § 268, p. 514; citing Ex parte Thomas, 133 Ala. 1, 21 South. 369; Hand v. Stapleton, 135 Ala. 156, 33 South. 689; Van Horn v. State, 46 Neb. 62, 64 N.W. 365; Omaha Real Est. & T. Co. v. Krag-scow, 47 Neb. 502, 66 N.W. 658. And: "If a conflict exists between two statutes or provisions, the earlier in enactment or position is repealed by the later. 'Leges posteriores priores contrarias abrogant.' Where there is an irreconcilable conflict between different sections or parts of the same statute, the

last words stand, and those which are in conflict with them, so far as there is a conflict, are repealed; that is, the part of a statute later in position in the same act or section is deemed later in time, and prevails over repugnant parts occurring before, though enacted and to take effect at the same time. This rule is applicable where no reasonable construction will harmonize the parts. It is presumed that each part of a statute is intended to coact with every other part; that no part is intended to antagonize the general purpose of the enactment. To ascertain the legislative intent every part of an act, and other acts in pari materia, are to be considered. One part of an act may restrict another part - an early section a later, and vice versa; but if one part is so out of line with other parts and the general purpose of the act that it can only operate by wholly neutralizing some other part, then the later provision is supreme, as expressing the latest will of the lawmaker. . . ." (Emphasis ours).

"To the same effect, see *Stevens v. State*, 70 Tex.Cr.R. 565, 159 S.W. 505.

"This view is strengthened by our holding in Opinion No. 0-5329, wherein this department was considering conflicting provisions in appropriations for the Certificate of Title Division from Certificate of Title fees in the Highway Fund. Ch. 400, Acts 43rd Leg., supra, at p. 946. One proviso limited the appropriation to \$175,000.00. In a paragraph following the proviso, expenditure of sufficient certificate of title fees to administer the act was authorized. The opinion on the question involved is as follows:

"'Since there is a direct conflict between these two provisions, which cannot be resolved by the application of any other rule of statutory construction, we must apply the rule that in case of conflict between provisions of the same enactment, the provision last in point of position in the Act controls, on the theory that it is the latest expression of the legislative will. *Stevens v. State*, 159 S.W. 505.

Thus the proviso is superseded by the paragraph succeeding it.

"It has been suggested that the conflict is to be resolved by regarding the proviso as an appropriation from the General Fund. To this we cannot agree. It is not the province of construction to vary the meaning of unambiguous language in order to avoid a conflict between portions of the law. This is legislation -- not interpretation."

"In our Opinion O-6379, it was held:

"In view of the foregoing authorities, it will be seen that in case of repugnancy between two provisions of the statute, the posterior in position should be given effect as being the later expression of the legislature." Citing 39 Texas Jurisprudence 139 and *Stevens v. State*, supra."

In view of the foregoing, you are therefore advised that the provisions of Section 3 of Senate Joint Resolution No. 26 of the 58th Legislature, Regular Session, must control over the provisions of Section 2, since Section 3 is the last in point of order of arrangement and, therefore, the election on the proposed Constitutional Amendment contained in S.J.R. 26 is to be held on the first Saturday after the first Monday in the month of November, 1963.

#### SUMMARY

Since Sections 2 and 3 of Senate Joint Resolution No. 26 of the 58th Legislature, Regular Session, are in irreconcilable conflict, Section 3 must prevail over the provisions of Section 2, since it is the last in point of order of arrangement, and the election on the proposed Constitutional Amendment is to be held on the first Saturday

Hon. Crawford C. Martin, page 6 (C-94)

after the first Monday in the  
month of November, 1963.

Yours very truly,

WAGGONER CARR  
Attorney General

By   
John Reeves  
Assistant

JR:ms

APPROVED:

OPINION COMMITTEE  
W. V Geppert, Chairman  
Gordon Appleman  
J. Arthur Sandlin  
Linward Shivers  
Jerry Brock

APPROVED FOR THE ATTORNEY GENERAL  
By: Stanton Stone